

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action mailed June 10, 2004. At the time of the Office Action, Claims 1-25 were pending in the Application. Applicant amends Claims 1, 4, 6, 7, 10, 12, 13, 16, 18, and 24 without prejudice or disclaimer. The amendments to these claims are not the result of any prior art reference and, thus, do not narrow the scope of any of the claims. Furthermore, the amendments are not related to patentability issues and only further clarify subject matter already present. All of Applicant's amendments have only been done in order to advance prosecution in this case. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Specification

The Examiner objects to the abstract of the disclosure because the "title" of the application appears on the abstract page and should be removed. Applicant has reviewed the relevant portions of the MPEP (esp. §608(1)(b)), and earnestly proffers that he is in full compliance with pertinent sections thereof. Applicant presumes this to be a minor oversight by the Examiner.

Consideration of Information Disclosure Statement

Applicant has submitted an Information Disclosure Statement (IDS) with this Response. Applicant respectfully requests the Examiner to review this IDS and to formally indicate that these materials have been considered in the context of the pending prosecution. Applicant suggests the Examiner use a PTO Form-1449 to provide written notification to this effect.

Section 103 Rejections

The Examiner rejects Claims 1-25 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,400,954 issued to Khan (hereinafter "*Khan*") and further in view of U.S. Patent No. 6,408,005 issued to Fan et al. (hereinafter "*Fan*"). These rejections are respectfully traversed for the following reasons.

Applicant respectfully notes that the Examiner has failed to satisfy each of the elements of non-obviousness, which are required to support a proper §103 analysis. According to MPEP §2143, to establish a *prima facie* case of obviousness, three criteria must be met. First, there must be some suggestion or motivation to combine the references. Second, there must be a reasonable expectation of success. Third, the prior art combination of references must teach or suggest all the claim limitations. (See generally MPEP §2143.) As an initial matter, the Examiner has failed to meet his burden with respect to the third criteria of non-obviousness, as none of the references cited by the Examiner disclose all of the limitations of the pending claims.

For example, *Khan* cannot restrict the patentability of the pending claims because *Khan* fails to offer any system associated with “transmitting the traffic for the first service class in unused bandwidth remaining in a second service class in cases where a bandwidth requirement for the traffic is not met by using the unused bandwidth allocated to the third service class” as recited by Independent Claim 1, as amended. For this teaching, the Examiner ostensibly relies on *Fan* (specifically at Column 5, lines 38-63 of *Fan*, as indicated by the current Office Action at page 3). However, *Fan* does not provide any disclosure associated with electing to use unused bandwidth based on the ability of a lower service class to satisfy the bandwidth requirement. Instead, *Fan* takes into account bottlenecks downstream in determining whether to allocate unused bandwidth. (See *Fan* at Column 5: lines 54-63.) Moreover, there is nothing in *Khan* that offers this missing disclosure, nor is there anything in *Khan* that is combinable with *Fan* that would inhibit the patentability of Independent Claim 1. *Khan* relates only to reserving network resources based on delay tolerance, not based on bandwidth associated with a specific class of service. (See Summary of *Khan* at Columns 2-3; lines 49-12.) Hence, *Khan* does not provide any subject matter relevant to the patentability of the pending claims, as *Khan* fails to offer a teaching, suggestion, or disclosure associated with the above-identified limitation.

For at least these reasons, Independent Claim 1 is allowable over the *Khan-Fan* combination. In addition, Independent Claims 7, 13, 19, and 25 include a limitation that is similar, but not identical, to that of Independent Claim 1. Accordingly, these Independent Claims are also allowable over the proffered combination. Additionally, the dependent claims corresponding to these Independent Claims are also allowable for analogous reasons.

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Thus, all of the pending claims have been shown to be allowable, as they are patentable over the references of record. Notice to this effect is respectfully requested in the form of a full allowance of these pending claims.

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CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

Applicant submits herewith a check in the amount of \$180.00 to cover the cost of the IDS filing fee. The Commissioner is hereby authorized to charge any additional fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts, L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas Frame at 214.953.6675.

Respectfully submitted,  
BAKER BOTTs L.L.P.  
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Date: August 19, 2004

Customer No. **05073**